

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONNA MCKAY,

Plaintiff,

-v-

**DECLARATION
16-CV-6834-FPG**

STATE OF NEW YORK,

Defendant.

GARY M. LEVINE, pursuant to 28 U.S.C. §1746, declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am an Assistant Attorney General, of counsel to Eric T. Schneiderman, Attorney General of the State of New York and, in that capacity, represent the defendant in the above-captioned proceeding.
2. I make this declaration in support of defendant's motion to dismiss and in opposition to plaintiff's summary judgment motion.
3. Summary judgment should be denied as plaintiff failed to provide the Court with a statement of undisputed facts as required by Local Rule 56(a)(1).
4. Plaintiff's 18 U.S.C. §925A action seeking to correct plaintiff's records is moot.
See declaration of John Allen.
5. Plaintiff's other claims, right to counsel and right to notification, are the subject of a pending Rule 12(b) application.

6. For the reasons stated in the motion to dismiss memorandum, as well as the memorandum submitted with this declaration, plaintiff's claims should be dismissed.

Dated: June 28, 2017

s/Gary M. Levine

GARY M. LEVINE

Assistant Attorney General of Counsel
NYS Office of the Attorney General
144 Exchange Boulevard, Suite 200
Rochester, New York 14614
Telephone: (585) 546-7430
gary.levine@ag.ny.gov

CERTIFICATE OF SERVICE

I certify that on June 28, 2017, I electronically filed the foregoing Declaration on behalf of defendant with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. Paloma A. Capanna, Esq.
633 Lake Road
Webster, NY 14580

And, I hereby certify that I have mailed, by the United States Postal Service, a copy of the document to the following non-CM/ECF participant(s):

1. n/a

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Defendant State of New York

s/Gary M. Levine

GARY M. LEVINE
Assistant Attorney General of Counsel
NYS Office of the Attorney General
144 Exchange Boulevard, Suite 200
Rochester, New York 14614
Telephone: (585) 546-7430
gary.levine@ag.ny.gov